

AzSPO POLICY
Number: 004
Impracticable Procurements

Statement:

A.R.S. § 41-2537, A.A.C. R7-340 allows an impracticable procurement if a situation exists which makes compliance with § 41-2533 or 41-2534 “impracticable, unnecessary or contrary to the public interest.” When such is the case, an agency may forego some or all of the requirements for competitive bids or proposals. Such procurements shall be made with as much competition as is practicable under the circumstances.

Discussion:

Determining whether a situation is “impracticable, unnecessary or contrary to the public interest” requires considerable discretion and bestows an obligation for due diligence and careful analysis to ascertain that such a procurement meets the purposes of the code as articulated under Laws 1984, Chapter 251. The agency should determine that an impracticable procurement would meet the following test before initiating the procurement:

1. Provide for increased public confidence;
2. Ensure the fair and equitable treatment of persons who deal with the procurement system of this state;
3. Provide increased economy in state procurement;
4. Foster broad-based competition within the free enterprise system; and
5. Provide safeguards for the maintenance of a procurement system of quality and integrity.

An impracticable procurement should be an infrequently used procurement method. The determination and approval of an impracticable situation should occur prior to the initiation of the procurement and should be supported by clear and convincing evidence that such procurement is in the best interests of the State.

An impracticable circumstance is one in which the need for materials, services, or construction cannot be expeditiously or cost-effectively met through normal procurement methods. An impracticable procurement shall be limited to those materials, services, or construction necessary to satisfy the momentary need. Should an ongoing need exist, a competitive source selection shall be employed as soon as feasible.

Following are a few situations from which an impracticable condition may arise:

- A state office is hosting a workshop on a highly technical project. An international expert on the topic is needed as the keynote speaker. The agency has worked on the project with one speaker who has both the credentials and the audience appeal;
- The legislature has mandated a contract for services from a specific provider; or

- Time-sensitive follow-up work is required on a highly complex project.

Each situation is unique in its own right and must be justified and documented with a thorough analysis of the circumstances to substantiate the determination. For the purposes of making such a determination, please consider that **impracticable is not impractical!** Impracticable means “impossible to do or carry out,” while impractical means “unwise to implement or maintain in practice” or “incapable of dealing efficiently with practical matters, especially finances.” Public procurement requires that impediments to competition be overcome, if possible and unless it is not in the best interests of the State to do so. Probably the biggest difference between private and public sector procurement is the requirement to remove as many impediments to competition as possible. The agency should incorporate as much competition as is feasible and negotiate a suitable agreement while pursuing an impracticable solicitation.

Authority has been delegated to agencies with unlimited procurement authority to approve impracticable procurements. Agencies with limited delegated authority should complete and submit a *Procurement Authorization Request* form, Attachment No. 1, to AzSPO prior to initiating an impracticable procurement. The written determination of the basis for the impracticable procurement and for the selection of the particular contractor shall be included in the contract file.

If an impracticable procurement is approved, a contract that is advantageous to the State shall be negotiated with the supplier. The contract must include the Uniform Terms and Conditions. The impracticable request and approval must be documented in the contract file.

Reporting Requirements:

Authority has been delegated to the unlimited agencies for approval of impracticable procurements. Agencies must prepare and submit quarterly reports identifying each impracticable procurement. The quarterly reports should be submitted by the 10th of the month following the end of each calendar quarter. A sample *Sole Source, Impracticable, and Emergency Procurements* report format is included as Attachment No. 2 to assist in standardization. Reporting requirements are a condition of agency delegation.

This policy is hereby effective this _____ day of June 2001.

John O. Adler, CPPO
State Procurement Administrator

Attachments:

Attachment 1, *Procurement Authorization Request* form

Attachment 2, *Sole Source, Impracticable, and Emergency Procurements* report format

Arizona State Procurement Office

Procurement Authorization Request

Requesting Agency:	
Contact Name:	Title:
Phone No.:	FAX No.:
Subject:	
Estimated cost:	Date:

Agency Request for Action	
Attach explanation, fact sheet or other documentation as deemed necessary.	
<input type="checkbox"/> Sole Source (ARS 41-2536)	<input type="checkbox"/> RFP (ARS 41-2534)
<input type="checkbox"/> Emergency (ARS 41-2537)	<input type="checkbox"/> Amendment (AAC R2-7-310)
<input type="checkbox"/> Impracticable (ARS 41-2537)	<input type="checkbox"/> Brand Name (AAC R2-7-414B)
<input type="checkbox"/> Delegation (ARS 41-2512)	<input type="checkbox"/> Other:
<input type="checkbox"/> See Attachment(s) for support of request.	
<input type="checkbox"/> Justification:	

Signature of Authorized Agency Representative / Title

Date

State Procurement Administer Response	
This is the official written determination in response to this request. The original will be maintained in AzSPO.	
<input type="checkbox"/> Request Authorized Pursuant to:	<input type="checkbox"/> Request Denied:
<input type="checkbox"/> Request Returned for Additional Information:	
<input type="checkbox"/> Comments:	

Signature / AzSPO Administrator

Date

CC: Agency File
Correspondence File

Arizona State Procurement Office
Procurement Authorization Request

Arizona State Procurement Office

Sole Source, Impracticable, and Emergency Procurements

Quarterly Report

Agency: _____

Quarter Ending: _____

Contact: _____

Phone Number: _____

[illegible]

Arizona State Procurement Office
Sole Source, Impracticable, and Emergency Procurements
Quarterly Report